GT GreenbergTraurig

Mitchell F. Brecher
(202) 331-3152
BrecherM@gtlaw.com

August 24, 2011

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 11-42 - Lifeline and Link Up Reform and Modernization
CC Docket No. 96-45 - Federal-State Joint Board on Universal Service
WC Docket No. 03-109 - Lifeline and Link Up
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

This letter is submitted on behalf of our client, TracFone Wireless, Inc. ("TracFone"). The purpose for this letter is to provide the Commission with additional record information which we believe to be relevant as it continues to evaluate the Lifeline and Link Up programs and to consider changes to the rules governing these low-income programs supported by the Universal Service Fund.

1. Non-Usage Policy

As the Commission considers whether and how to establish and implement a non-usage policy, it should be aware of the following description of TracFone's current non-usage policy as posted on its Lifeline website (www.safelink.com):

> "No Usage" De-Enrollment and Deactivation: Regardless of the Service End Date displayed on your handset, if you exceed 2 months without any Usage (as defined in this section), You will be de-enrolled from the SAFELINK Program. "Usage" is defined as any transaction including, but not limited to, making or receiving a call, sending or opening a text message, downloading data content, adding airtime or receiving Your free monthly airtime. Upon de-enrollment for non-Usage, You will have up to a 30 day grace period to reenroll in the SAFELINK Program by calling 1-800-SAFELINK. If you do not reenroll, use your phone or call SAFELINK Customer Care within 30 days of your de-enrollment, your phone service will be deactivated. In order to reactivate your SAFELINK phone and re-enroll in the SAFELINK Program, you will need to call SAFELINK Customer Care. Upon successful re-enrollment, you will receive the monthly minutes that you were entitled to receive through the date of your re-enrollment in the SAFELINK Program. In addition, you will be assigned the service days displayed on your handset, which are the days you were granted when first enrolled in the program.

The above non-usage policy is followed in all states where TracFone offers SafeLink Wireless® service as an Eligible Telecommunications Carrier ("ETC"). During a recent meeting, Wireline Competition Bureau Staff asked why receiving airtime is considered to be usage for purposes of the non-usage policy. With TracFone, Lifeline customers' allotments of minutes are sent to customers' handsets on or about the first day of each month. In order for a handset to receive the minutes, the phone must be charged and turned on. TracFone conducts an extensive ongoing campaign of communicating to its Lifeline customers reminders that their handsets must be turned on in order to receive each month's minutes allotments. TracFone also instructs customers how to retrieve their monthly minutes allotments when the customers' handsets were not turned on at the beginning of the month when the additional minutes are sent. A handset not being used by the customer, stored somewhere or misplaced, or without a charged battery will not and cannot receive minutes sent to it. The fact that a Lifeline customer takes the steps necessary to have the battery charged and the handset device set to the "on" position on or about the first of each month indicates that the customer wishes to receive the additional minutes and intends to continue to use the service.

Of those SafeLink Wireless® customers who have their handsets turned on and batteries charged and who therefore receive their monthly minutes allotments, 83 percent use their handsets each month either for voice calls or to send/receive text messages. Those customers who do not use their handsets for voice calls or text messages each month often allow their monthly allotments to accumulate so that they have large quantities of minutes for usage during succeeding months. Since the data indicate that the overwhelming portion of those customers who receive additional minutes in any month use those minutes to place or receive calls or to send or receive texts, inclusion of receipt of minutes in the definition of usage is appropriate.

2. Verification Costs

Annual verification of Lifeline customers' continuing eligibility can be a costly undertaking. The Commission's rules provide for one verification process applicable to all ETCs -- surveying a statistically-valid random sample (47 C.F.R. § 54.410(c)(2)). TracFone and other non-facilities-based ETCs subject to conditions imposed in Commission orders forbearing from application of 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i) are subject to an additional annual verification requirement -- that they also contact every Lifeline customer to verify that each customer i) remains head of household, and ii) obtains Lifeline-supported service only from that ETC. The latter Forbearance verification requirement is more costly than the verification requirement based on statistically-valid samples applicable to all ETCs. However, as described herein, the Forbearance verification requirement, based on self-certification of continuing Lifeline eligibility by all enrolled Lifeline customers, is a more effective means for ensuring that only Lifeline-eligible customers remain enrolled in the program. In 2010, TracFone spent $9.5 million to contact each Lifeline customer to verify that those customers remained head of household and only received Lifeline service from TracFone. This process involved 15 levels of attempts to contact customers. Approximately 2.8 million customers were contacted (or, more specifically, were attempted to be contacted) at a per customer cost of $3.39. Of those customers who TracFone attempted to contact, approximately 2 million were reached and verified their continuing eligibility, at a cost of $4.75 per verified customer. As a result of this process which involved attempts to reach every enrolled Lifeline customer, approximately 800,000 customers were removed from the Lifeline program either because they did not verify that they remain head of household and receive Lifeline service only from TracFone or, (in the majority of situations) simply because they failed to respond to attempts to contact them.

In 2010, TracFone also spent $137,000 to contact a statistically-valid sample of its Lifeline customers to verify that they remained Lifeline-eligible. In this process, TracFone attempted to survey 4,267 of its enrolled Lifeline customers. Contact attempts included up to 4 mailings and as many as 45 call attempts. Of those customers, TracFone was able to verify the continuing eligibility of only 2,050 -- less than 50 percent. TracFone's cost per customer contacted in this statistically-valid sampling process was $66.69. Based upon that random sample approach (which was done in full conformance with the Commission's rules), 2,217 customers were de-enrolled, as compared with 800,000 who were de-enrolled based upon the process followed by TracFone for verifying that its entire base remained head of household and received Lifeline service only from TracFone. If the Commission's goal is to reduce Universal Service Fund support going to customers who are no longer Lifeline-eligible, it should be readily apparent which method is more effective and more fiscally feasible. Importantly, it is important that the Commission recognize that the verification requirement imposed only on those few ETCs subject to forbearance results in a far greater number of de-enrolled customers than the statistically-valid random sample method set forth in the Commission's existing rules for all ETCs.

As TracFone has explained in prior comments in this proceeding, if the Commission is seriously committed to reducing wasteful use of Universal Service Fund resources, then the Commission should subject all ETCs to the same Lifeline eligibility verification requirements and those requirements should ensure that only customers whose continuing eligibility has been verified continue to receive Lifeline benefits. Specifically, all ETCs (wireline and wireless, facilities-based and resale, post-paid and prepaid) should be required to contact every Lifeline customer annually and have each customer verify by self-certification under penalty of perjury the customer's continuing eligibility, *i.e.*, that the customer remains qualified based on program participation or income, that the customer remains head of household, and that the customer only receives Lifeline-supported service from that ETC. Based on its experience as an ETC providing Lifeline service in more than thirty states, TracFone has concluded that verifying continuing eligibility by contacting one hundred percent of each ETC's Lifeline customer base and having each customer self-certify under penalty of perjury the customer's continuing eligibility is the fairest and most efficient manner to verify continuing eligibility. Moreover, the results of this process are more accurate and will result in de-enrollment of more no-longer-qualified customers than will full certification of the continuing eligibility of a statistically-valid sample of each ETC's Lifeline customers.

The problem with verification based on full certification of a statistically-valid sample of Lifeline customers should be apparent. Of those customers surveyed, those who do not verify their continued eligibility or who do not respond to verification requests must be de-enrolled.

However, none of the non-sampled customers must be de-enrolled. For example, if an ETC attempts to survey a statistically-valid sample comprising 5 percent of its Lifeline customer base and 50 percent of those customers surveyed either do not verify their continuing eligibility or do not respond at all, then that 50 percent of the 5 percent surveyed (*i.e.,* 2.5 percent of the customer base) will be de-enrolled. However, none of the 95 percent of customers not surveyed will be de-enrolled even though it is virtually certain that some percentage of those customers not surveyed either would not verify their continuing eligibility or would not respond.

While TracFone supports annual verification of continuing eligibility based on self-certification of each ETC's entire customer base, it respectfully urges the Commission not to require documentation of continuing eligibility by the entire base. Such a requirement would be economically burdensome for each ETC and would force many still-eligible Lifeline customers to be de-enrolled. As noted above, TracFone's cost of such full certification per customer has averaged $66.69. Moreover, less than fifty percent of customers contacted responded and produced the requisite documentation. This low response rate is not surprising. Most Lifeline-eligible low-income consumers do not have readily available access to documentation of their program participation. Of those that do have such documentation, few have access to photocopiers, fax machines, scanners, or computers with Internet access necessary to transmit the documentation to the ETC. In the past, some Lifeline customers were able to use such facilities at nearby post offices to transmit their documentation of eligibility. However, TracFone has been informed by the United States Postal Service that it no longer makes available copying, faxing, and scanning services at local post offices.

In suggesting a full customer base verification by self-certification requirement, TracFone notes that this will only be a short-term solution to prevent no longer qualified persons from continuing to receive Lifeline support, pending development and implementation of an eligibility data base. Once a data base showing customer enrollment and eligibility information has been implemented and becomes available to ETCs, there will be no need for an annual verification process. ETCs instead will verify their Lifeline customers' continuing eligibility by accessing the data base.

3. Accuracy of Data Base Information

There is no doubt that the most accurate mechanism for verifying Lifeline customers' continuing eligibility is though access to verification data bases where such data bases are available. Currently, several states make program-based eligibility data bases available to ETCs. When TracFone attempts to contact customers to verify those customers' continuing eligibility for Lifeline or to verify that the customers remain head of household and only receive Lifeline service from TracFone, many customers do not respond to those verification requests. Other ETCs have had similar experiences with non-enrollment. Those customers who do not respond to such requests are de-enrolled from the Lifeline program. TracFone has long suspected that many of those non-responding customers who are de-enrolled remain Lifeline-eligible. This belief has been confirmed by data recently obtained by TracFone involving two states where it does have access to program-based enrollment data bases -- Washington and Wisconsin. In Washington, TracFone was only able to verify the continuing eligibility of 37.21 percent of those customers contacted as part of the statistically-valid random sample process. In Wisconsin, only 42.39 percent of the sampled customers verified their continuing eligibility. In both states, most of the customers whose eligibility was not verified did not respond to communications from TracFone and would have had to be de-enrolled but for TracFone's access to those states' data bases. However, those states' data bases of customers enrolled in qualifying programs indicated that most of TracFone's customers were enrolled in qualifying programs and therefore remained Lifeline-eligible. In Washington, of those customers subject to TracFone's surveying of a statistically-valid sample of enrolled customers, 94 percent of customers were enrolled in qualifying programs. In Wisconsin, 88 percent remained enrolled in qualifying programs.

The Washington and Wisconsin results demonstrate what TracFone has long believed: that many Lifeline customers who must be de-enrolled due to their failure to respond to verification requests are, in fact, Lifeline-eligible at the time of de-enrollment. Once enrollment eligibility data bases become available and accessible to ETCs in other states as they currently are in Washington and Wisconsin, far fewer Lifeline customers who remain Lifeline-eligible will be de-enrolled for not verifying continued Lifeline eligibility.

4. Mandatory Obtainment of Date of Birth and Social Security Number Information

TracFone has discussed with Staff why one of the most effective means to ensure that only qualified households are able to enroll in Lifeline and that qualified households only enroll in one Lifeline program is to collect from all applicants date of birth information and Social Security Number information (only the last 4 digits are necessary). Though not required by the Commission or by most states, TracFone routinely collects that information from Lifeline applicants in all states where it provides Lifeline service as an ETC. Based upon TracFone's experience, attempts by customers to enroll multiple times or in multiple ETCs' Lifeline programs is a far greater source of fraud than are enrollment attempts by persons not qualified under applicable Lifeline eligibility criteria. It is for that reason that TracFone has concluded that waste, fraud and abuse of Universal Service Fund resources caused by improper Lifeline enrollment could be significantly reduced if collection of date of birth and Social Security number information were mandatory for all ETCs.

Applicant date of birth and last four digits of Social Security numbers in addition to name and address provides ETCs with four separate data points to verify the accuracy of customer information. Moreover, date of birth and Social Security number information is readily known only by the enrolling customers themselves. One benefit of requiring date of birth information is that it enables TracFone to deny enrollment to minors -- a frequent source of fraudulent enrollment attempts. TracFone contracts with a third party vendor who matches that data against multiple data bases to confirm that the data matches that for the person the applicant claims to be. These procedures prevent improper Lifeline enrollment by persons not qualified to receive Lifeline support as well as persons who already are receiving Lifeline-supported service from other ETCs. So far, in 2011, TracFone's insistence on obtaining date of birth and Social Security number information has caused it to reject approximately 30 percent of its Lifeline applicants because the information provided by the applicants could not be verified. In short, that data enables TracFone to determine whether applicants are entitled to receive Lifeline benefits. Those applicants who are not so entitled are quickly identified and denied enrollment. A requirement that all ETCs obtain such data would substantially reduce successful enrollment attempts by persons not qualified for Lifeline support while enabling low-income households unable to provide documentation of program-based eligibility to enroll and receive the Lifeline benefits which they need and to which they are entitled.

5. The Commission Should Continue to Allow Initial Enrollment in Lifeline Upon an Applicant's Self-Certification Under Penalty of Perjury of Program-Based Eligibility

As TracFone has indicated in its comments in this proceeding and in other submissions, the Commission should not impose a requirement that Lifeline applicants demonstrate their program-based eligibility by providing documentation of their participation in qualifying programs. The reasons why such so-called "full certification" complicate the enrollment process and deter many qualified low-income households from enrolling in Lifeline have been described in previous filings. However, the Commission should also be aware of the profound cost differences between such full certification and self-certification. Several states currently require full certification. Based upon TracFone's experience in those states, TracFone's costs of customer acquisition (*i.e.*, marketing, advertising, outreach, the enrollment process) are nearly 600 percent higher per customer enrolled in Lifeline ($144.00 per enrolled customer in full certification states vs. $25.00 per enrolled customer in self-certification states). Based upon these data, it is apparent that mandatory full certification of initial Lifeline eligibility will reduce enrollment in Lifeline by qualified low-income households and will discourage ETCs from committing resources to extensively market Lifeline services if the costs of customer acquisition are made unnecessarily excessive due to a burdensome full certification requirement.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Respectfully submitted,

Mitchell F. Brecher

cc: Ms. Kimberly Scardino
Ms. Jamie Susskind
Ms. Cindy Spiers
Mr. Jonathan Lechter
Ms. Divya Shenoy
Mr. Robert Finley
Mr. Graham Dufault